IVOR RODNEY A/L JOHN NARAYANAN

v.

SURUHANJAYA DAGANGAN KOMODITI

HIGH COURT MALAYA, KUALA LUMPUR
DATO' SITI NORMA BTE YAAKOB J.
[ORIGINATING MOTION NO. R1-25-127-97]
29 AUGUST 1994

COMMODITIES TRADING: Default by dealer in trading activities - Forfeiture of deposit - Disbursement of deposit to claimants - Proof of claims - Applicant's claim for refund of margin payment made with dealer rejected by Commissioner - Whether rejection thereof proper - Whether proper inquiry conducted by Commissioner - Commodities Trading Act 1985 ss. 38(a)(ii) & 40(1)(c) - Commodities Trading (Dealers, Commodity Trading Advisers and Representatives) Regulation 1980 r. 17.

The applicant had wanted to trade in commodities on the Kuala Lumpur Stock Exchange (KLSE) and towards that end had opened three accounts with Commwell Sdn. Bhd. (Commwell) with a total margin payment of RM24,000. Commwell was a member of the KLSE and was registered with the respondent as a dealer in the commodity futures contracts under the Commodities Trading Act 1985 (the Act) and for that purpose had deposited RM750,000 with the respondent. Following Commwell's default in its trading activities, the respondent forfeited the deposit and pursuant to the provisions of the Act, sought to apply the deposit to various claimants who had sustained losses as a result of Commwell's default. One such claimant was the applicant.

The facts showed that the applicant had made the aforesaid payment to Commwell by way of cash. This being the case, the Commissioner, in inquiring into the applicant's claim, requested that the applicant produce some documentary evidence to support such payment or failing that the sources of his income. The applicant was not able to do so and in consequence his claim was dismissed by the Commissioner. The applicant appealed to the respondent but his appeal was also dismissed for like reasons. The applicant hence applied to the High Court for an order of *certiorari* to quash the decision of the respondent.

The primary issue that arose was whether in dismissing the applicant's claim herein, the Commissioner had failed to take into account relevant matters and in any case whether a proper inquiry into the claim had been conducted.

Held:

The inquiry conducted by the Commissioner is a domestic inquiry and if the sources of the applicant's earnings is a factor which the Commissioner considers to be relevant, then he is at liberty to inquire into such sources . By doing so the Commissioner cannot be said to have fettered his discretion by irrelevant considerations. On the contrary the request for the sources of income is most necessary to safeguard the interest of all potential claimants to the forfeited deposit fund.

[Application dismissed].

Legislation referred to:
Commodities Trading Act, 1985, ss. 17(6) (b), 38 (a) (ii), 40(1)(c)

For the applicant - Joseph Yeo; M/s. Joseph Yeo
For the respondent - Tuan Haji Sulaiman Abdullah & Cik Anita Sockalingam; M/s. Zain & Co.

JUDGMENT

Siti Norma Bte Yaakob J:

In these proceedings, the applicant seeks for an order of *certiorari* to quash the respondent's decision dated 21 October 1992 dismissing the applicant's appeal against a decision of the Commisioner of Commodites Trading (the commissioner) dismissing the applicant's claim for a refund of all deposits made by the applicant with Commwell Sdn. Bhd. (Commwell).

At the material time, Commwell was a member of the Kuala Lumpur Commodity Exchange and was registered with the respondent as a dealer in the commodity futures contracts on specified oversea Exchanges under the Commodities Trading Act, 1985, (the Act). As a preresquite to such registration Commwell had deposited RM750,000 with the respondent under s. 38 (a) (ii) of the Act and under s. 40 (1) (c) of the Act, the respondent had forfeited the deposit following Commwell's default in its trading activities. The respondent then applied the deposit to various claimants who had sustained losses resulting from Commwell's default and one of such claimants in the applicant himself.

The applicant had opened 3 accounts with Commwell with a total margin payment of RM24,000. It was to consider the applicant's claim for the refund of such margin payments that the commissioner had requested the applicant to produce evidence for such payments in the form of cash withdrawal statements from the applicant's bankers as the margin payments were made in cash. The applicant was not able to do so as the cash payments did not come from his bank but from the cash that he had kept in his house. The commissioner then requested the applicant to produce evidence of the source of such monies and despite numerous opportunities given to the applicant to do so, he was not able to provide the commissioner with the necessary evidence and on 30 May 1992, the commissioner dismissed his claim under r. 17(6)(b) of the Commodities Trading (Dealers, Commodity Trading Advisers and Representatives) Regulation, 1980, (the Regulations). Dissatisfied the applicant appealed to the respondent pursuant to s. 46 of the Act on 23 June 1992 and on 21 October 1992, the respondent dismissed the applicant's appeal and upheld the Commissioner's decision when he failed to produce all the necessary documents to support his claim. It is pursuant to the respondent's decision on his appeal that the applicant now seeks to quash that decision by an order of *certiorari*.

Although the applicant has raised a number of issues in his affidavit, before me he relied only on the following 2 grounds.

(1) That the Commissioner had taken into consideration irrelvant matters or failed to take into account relevant matters.

(2) That there is was no proper inquiry conducted by the commissioner as envisaged by r. 17 of the Regulations.

It is the applicant's case that the cash deposits he had made with Commwell came from his earnings as well as his wife's earnings. The source of his earnings came from him conducting seminars both locally and internationally and the sale of seminar materials in books, audio types and video tapes. His wife has been an Avon dealer for many years

and was rated the top saleswoman in Klang for 5 years and the top in the country for 1986. As their joint earnings were not banked in but was kept at home, there is no way that the applicant can find any documentary proof to establish the sources of such earnings.

Regulation 17 gives the commissioner wide powers just how he should go about determining whether the applicant had suffered pecuniary loss resulting from Commwell's default. Behind such inquiry is the paramount consideration that such a claim is a genuine one and not a fictitious or fraudulent one. It is for this very reason the applicant was ordered to submit the sources of his income as all the deposits he made to Commwell were in the form of cash payments. If indeed the cash came from his earnings and that of his wife's, then the sources of such earnings are identifiable. Under these circumstance I consider that it would not be difficult for the applicant to sumbit some documentary proof like vouchers etc from the seminars he had conducted and from Avon to certify the commissions that his wife had earned through the years. None of such documents came from the applicant. Instead he only submitted documents that were issued by Commwell. It is true that there is no element of suspicious dealings or fraud anywhere but it is to eliminate such elements that the commissioner had requested for documentary proof of the applicant's sources of income.

The inquiry conducted by the commissioner is very much a domestic inquiry and if the sources of the applicant's earnings is a factor which the commissioner considers to be relevant, I have no reason to question his decision, as he is in a better position to guage the authenticity of each claim that comes before him. Whilst he does not reject that Commwell had received the cash payments made by the applicant he is at liberty to enquire into the sources of the applicant's payments. By doing so I do not consider that the Commissioner has fettered his discretion by irrelevant considerations. On the contrary the request for the sources of income is most necessary to safeguard the interest of all potential claimants to the forfeited deposit fund.

On that finding I had dismissed the applicant's originating summons with costs.